

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

NOV 8 2 28 PM '94

MM Docket No. 94-125

DISPATCHED BY

In the Matter of

Amendment of Section 73.202(b), RM-8534
Table of Allotments,
FM Broadcast Stations.
(Fredericksburg and Helotes, Texas)

NOTICE OF PROPOSED RULE MAKING

Adopted: October 26, 1994; Released: November 7, 1994

Comment Date: December 29, 1994

Reply Comment Date: January 13, 1995

By the Acting Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by October Communications Group, Inc. ("petitioner"), requesting the reallocation of Channel 266C from Fredericksburg, Texas, to Helotes, Texas, and the modification of Station KONO-FM's license to specify Helotes as its community of license. Petitioner states that it will apply for the channel, if reallocated to Helotes.

2. Petitioner seeks modification of Station KONO-FM's license pursuant to the provisions of Section 1.420(i) of the Commission's Rules which permits the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. Fredericksburg and Helotes are located less than the required 290 kilometers for co-channel Class C stations. Therefore, the use of Channel 266C at Helotes is mutually exclusive with its use at Fredericksburg. Petitioner contends that the adoption of its proposal would result in a preferential arrangement of allotments since it would provide Helotes with its first local aural transmission service. Fredericksburg would not lose its sole local aural transmission service as it would continue to receive transmission service from fulltime AM Station KNAF, operating on 910 KHz.

3. Petitioner describes Helotes as a growing community with a population of 1,535 persons.¹ Helotes is also incorporated, with its own police and fire departments. In addition, petitioner states that one of the elementary schools of the Northside Independent School District is located within the Helotes city limits, with a student population of over 400 children, that there are two volunteer libraries and numerous places of worship. As to local businesses, we are told that Helotes has three gas stations, twelve restaurants, a dry-cleaning store, a feed store, a florist, a video store, a taxidermy shop and a grocery-pharmacy store. Finally, peti-

tioner notes that the following non-profit organizations are represented in Helotes: 4-H Club, American Association of Retired Persons, Lions and Lioness' Club, Optimist Club and the Casa Helotes Senior Citizens Center.

4. Based on the information before us, we are unable to tentatively conclude that petitioner's proposal would result in a preferential arrangement of allotments. It is true that the reallocation of Channel 266C to Helotes would provide that community with its first local aural transmission service. However, we note that Fredericksburg is substantially larger than Helotes, with a population of 6,934 persons, and is also the seat of Gillespie County. Further, while neither community is located within an Urbanized Area, Helotes is located within the Rand McNally San Antonio Metropolitan Area and is considered to be well-served with at least five aural reception services. Finally, petitioner is not seeking a change of transmitter site and thus there would be no improvement in the service already provided by Station KONO-FM, which already covers Helotes with a 70 dBu city-grade signal. See *Van Wert, Ohio and Monroeville, Indiana*, 7 FCC Rcd 6519 (1992).

5. However, we believe the public interest would be served by soliciting further comments on this proposal since it could provide Helotes with its first local aural transmission service, if granted. We also propose to modify petitioner's license for Station KONO-FM to specify Helotes as its community of license. In compliance with Section 1.420(i), we will not accept competing expressions of interest in use of Channel 266C at Helotes. Channel 266C can be allotted to Helotes in compliance with the Commission's minimum distance separation requirements at Station KONO-FM's presently licensed transmitter site, which is 32.2 kilometers (20 miles) northwest of Helotes.²

6. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Fredericksburg, Texas	266C	--
Helotes, Texas	--	266C

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before **December 29, 1994**, and reply comments on or before **January 13, 1995**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

¹ All population figures are taken from the 1990 U.S. Census.

² The coordinates for Channel 266C at Helotes are 29-50-26

North Latitude and 98-49-32 West Longitude.

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9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
 Acting Chief, Allocations Branch
 Policy and Rules Division
 Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also

expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.